



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

162480

REPLY TO ATTENTION OF:

**MEMORANDUM**

SUBJECT: Settlement Analysis for Dead Creek Site No. 60, Sauget,  
Illinois

FROM: David A. Ullrich  
Acting Director, Waste Management Division

Bertram C. Frey  
Acting Regional Counsel

TO: Valdas V. Adamkus  
Regional Administrator

This memorandum recommends that the signed settlement agreement (attached) submitted by the four PRPs at the Dead Creek Site in Sauget, Illinois be approved and signed. An emergency response action was conducted at the site in 1982 at a cost of \$49,974.51. It is strongly recommended that this settlement be accepted because it is very unlikely that this matter will ever become a filed case due to the small amount of money involved and due to the fact that the money spent cannot be recovered as a result of the expiration of the applicable statute of limitations. Following is a ten point analysis of the settlement:

1. Volume of the Wastes Contributed

This removal action consisted of installing a chain link fence around the site portion of the Dead Creek, specifically that portion of the Dead Creek which is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois. A report prepared by the Illinois Environmental Protection Agency (IEPA) (St. John, 1981) indicates that Monsanto and Cerro Copper both have facilities at the headwaters of the site and that they are known to have discharged process wastes into Dead Creek prior to 1970. Monsanto produced PCBs at its Sauget Facility, and sampling of the holding ponds behind Cerro Copper's recycling plant, which at one time were the headwaters of Dead Creek, showed PCBs, dichlorobenzene and high levels of metals. Ruan Trucking is the successor of Harold Waggoner and Company, a trucking firm which "made a practice of washing [its industrial] waste hauling trucks out and discharging the contents into Dead Creek." Midwest Rubber Company, now a division of Empire Chem

Inc., had a pipeline leading from its factory to the creek from the 1940s to the early 1960s. U.S. EPA relied upon this information in naming the four companies as PRPs at the site; however, U.S. EPA was unable to determine the volume of wastes contributed by each PRP.

## 2. Nature of Wastes Contributed

Sediment samples collected by IEPA in August 1980 revealed high levels of heavy metals, PCBs, xylene, dichlorobenzene, trichlorobenzene and chloronitrobenzene.

## 3. Strength of Evidence Linking Wastes at Site to the Settling Party

U.S. EPA relied on an IEPA report (St. John, 1981) to name Monsanto, Cerro Copper, Ruan Trucking and Midwest Rubber as PRPs, and has no independent liability evidence linking these companies to the site.

## 4. Ability of Settling Party to Pay

The Settling Defendants include large companies, and it is our evaluation that they have the ability to pay the amount indicated in the attached settlement.

## 5. Litigative Risks in Proceeding to Trial

The litigative risk in going to trial is large. U.S. EPA's removal activities were completed in 1982. Section 113(g)(2) of CERCLA provides that cost recovery actions must be initiated within 3 years after completion of a removal action. Even assuming that U.S. EPA could have brought a cost recovery action within 3 years of the effective date of SARA, the statute of limitations expired in October 1989. The PRPs have raised the statute of limitations as a defense to our demand letters, sent on December 27, 1989.

## 6. Public Interest Considerations

A Cost Recovery Close Out Memo for this site, dated January 22, 1990, reflects the fact that demand letters were outstanding, but indicates that, because of the relatively small amount of money involved, no further enforcement action would be taken on this site if we failed to recover our costs through those demand letters. Because the decision has been made not to pursue the PRPs in litigation, it is in the public interest to collect the money offered in settlement.

## 7. Litigative Strengths/ Precedential Value

There was clearly an imminent and substantial threat to the public health, welfare and the environment when U.S. EPA conducted its removal action, and installing a fence around the site was the most efficient and cost-effective means to prevent contact with the site.

## 8. Nature of the Case that Remains After Settlement

There is no case that remains after settlement.

## 9. Value of Obtaining a Sum Certain Now

A cost recovery close out memo has already been signed. If we do not collect the money offered in settlement, the Fund will lose the money with no prospect of getting it back.

## 10. Inequities and Aggravating Factors

This removal action took place in October 1982. There are not many documents available in the file which describe how that removal was conducted. For example, the file indicates that "a local contractor" installed the fence, but no indication of which local contractor. Additionally, as noted previously, our liability evidence consists of only an IEPA report which concludes that the PRPs are responsible.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	U.S. EPA DOCKET NO.
	)	
DEAD CREEK SITE NO. 60	)	ADMINISTRATIVE ORDER
	)	BY CONSENT
	)	
RESPONDENTS:	)	
Monsanto Company	)	RE: REIMBURSEMENT OF
Cerro Copper Products Company	)	RESPONSE COSTS.
Midwest Rubber Reclaiming	)	
Ruan Transportation	)	

JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(h)(2). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E.

This Administrative Order on Consent is issued to Monsanto Company, Cerro Copper Products Company, Midwest Rubber Reclaiming and Ruan Transportation (hereinafter "Respondents"). The purpose of this Consent Order is for EPA to recover costs incurred at or in connection with the Dead Creek Site No. 60, also known as Dead Creek Segment B, located in Sauget, Illinois, and to resolve the liability of the Respondents for such response costs. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order. This Consent Order will be binding upon EPA and shall be binding upon Respondents, their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her.

STATEMENT OF FACTS

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois (hereinafter "the site").

2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the site.
3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the site under Section 106 of CERCLA, 42 U.S.C. 9606, specifically, installing a chain link fence around the site portion of the Dead Creek, and may require future response actions.
4. In performing this response action, EPA incurred response costs totalling \$49,974.51. Further response costs may be incurred by EPA in the future.
5. The Illinois Environmental Protection Agency has indicated to U.S. EPA that Respondents are responsible for discharges of hazardous substances into the site.
6. EPA and Respondents desire to settle certain claims arising from Respondents' involvement with the site without litigation and without admission or adjudication of any issue of fact or law.

#### EPA DETERMINATIONS

Based upon the Findings of Fact set forth above EPA has determined that:

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is a Facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).
2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).
3. Each Respondent is a responsible party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the site.
4. The past, present or future migration of hazardous substances from the site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

#### RESPONDENTS POSITION

1. The consent of the Respondents to the terms of this Order shall not constitute or be construed as an admission of any

past or future liability or of U.S. EPA's Statement of Facts or Determinations.

2. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

ORDER

1. Respondents shall pay to the Hazardous Substance Superfund twelve thousand five hundred dollars (\$12,500) within twenty days of the effective date of this Consent order.
2. Such payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name of Respondents and the site, and shall be sent to:

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

3. Within twenty days of the effective date of this Order, Respondents shall send a photostatic copy of their check to:

Elizabeth Doyle  
Assistant Regional Counsel  
U.S. EPA, Region V (5CS-TUB-4)  
230 South Dearborn  
Chicago, Illinois 60604

4. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3).
5. Subject to Paragraph 6 of this Consent Order, upon payment of the amount specified in Paragraph 1 of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the site as of August 30, 1990.
6. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Respondents for:

- (a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Order; or
  - (b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources.
7. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Order.
  8. EPA and Respondents agree that Respondents signing this Administrative Order by Consent and the payment of the amount required in accordance with Paragraph 1 of this Consent Order does not constitute an admission of any liability by any Respondent and shall not be considered an admission of liability for any purpose. Specifically, Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the USEPA Findings of Fact and Determinations contained in this Consent Order.
  9. In consideration of EPA's covenant not to sue in Paragraph 5 of this Consent Order, Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of the EPA activities in installing a chainlink fence around the site portion of Dead Creek as defined in Paragraph 5 above, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of such chainlink fence installation activities.
  10. Subject to Paragraph 6 of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondents will have resolved their liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and shall not be liable for claims for "Covered Matters."
  11. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(8)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate. In the event the USEPA does withdraw its consent to this Administrative

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

September 27, 1990  
Date

By:

Warren L. Smull

August 9, 1990  
Date

Manager, Remedial Projects  
Title

Monsanto Company  
Company



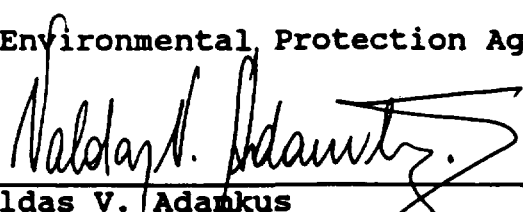
Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

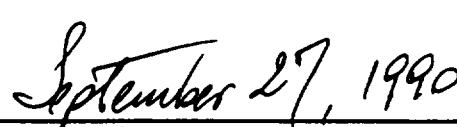
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IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

  
Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

  
Date

By:

  
Paul Tandler

August 13, 1990  
Date

Vice President

Title

CERRO COPPER PRODUCTS CO.

Company

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

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U.S. Environmental Protection Agency

By:

Valdas V. Adamkus  
Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

September 27, 1990  
Date

cc  
KF. By:

Treasurer  
Title

Ruan Transport Corporation  
Company

8/15/90  
Date

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

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IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: Valdas V. Adankus

Valdas V. Adankus  
U.S. Environmental Protection  
Agency v.

September 27, 1990  
Date

By: Howard J. Drake

U.P. & G.M.  
Title

Midwest Rubber Reclaiming Div.  
Company

A Div. of Empire Chem Inc.

8/17/90  
Date